

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:

VANESSA MARLENE FORD

Debtor

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CASE NO. 97-12291

DECISION

At Fort Wayne, Indiana, on March 22, 2006

This matter is before the court on debtor's motion, filed pursuant to 11 U.S.C. §522(f)(1), to avoid a judicial lien which allegedly impairs an exemption in real estate. The lien in question is held by Providian Bank (First Deposit). Notice of the motion has been given to the lienholder and there has been no objection thereto. Despite the fact that the motion is unopposed, the court cannot properly grant it because it fails to allege sufficient facts to state a cognizable claim for lien avoidance pursuant to §522(f)(1). See, In re Wall, 127 B.R. 353, 355 (Bankr. E.D. Va. 1991). Unlike adversary proceedings which contemplate notice pleading, motions initiating contested matters are required to state the grounds for relief "with particularity." See, Fed. R. Bankr. P. Rule 9013.

Not every judicial lien upon exempt property may be avoided. Lien avoidance pursuant to §522(f)(1) is available only where the judicial lien impairs a claimed exemption. The concept of impairment was reduced to a mathematical formula by the amendments to §522(f) promulgated by the Bankruptcy Reform Act of 1994. 11 U.S.C. §522(f)(2)(A); In re Thomsen, 181 B.R. 1013, 1015 (Bankr. M.D. Ga. 1995). When the amount due on account of the liens sought to be avoided, all other liens on the property and the amount of the debtor's exemption "exceeds the value that the debtor's interest in the property would have in the absence of any liens" the debtor's exemption is

impaired. 11 U.S.C. §522(f)(2)(A)(i) thru (iii). Thus, in order for the court to determine if a judgment lien impairs an exemption to which a debtor may be entitled, in addition to identifying the property subject to the judicial lien, the motion must provide information concerning the value of the property, the amount due on account of all liens against it, the amount of the liens to be avoided, and the amount of the exemption claimed by the debtor. 11 U.S.C. §522(f)(2)(A); see also, Thomsen, 181 B.R. at 1015-16.

In order to determine whether the judicial lien against the debtor's property impairs an exemption, the court must apply the formula set out in § 522(f)(2)(A). Yet, before that becomes necessary, the court should first determine whether the debtor has actually claimed an exemption in the property, because lien avoidance pursuant to § 522(f)(1) is available only where the judicial lien impairs an exemption. Where a debtor has not claimed an exemption in the property subject to a judicial lien, there is nothing for § 522(f) to protect. See, In re Berryhill, 254 B.R. 242, 243 (Bankr. N.D. Ind. 2000); In re Wall, 127 B.R. 353, 356 (Bankr. E.D. Va. 1991)("[I]t does not make sense to allow a lien to be avoided on property that has not been claimed exempt."); Swaim v. Kleven, 1:04-CV-33 (D. N.D. Ind. 2004). See also, In re Mukhi, 246 B.R. 859, 862 (Bankr. N.D. Ill. 2000)(one requirement for lien avoidance under 522(f) is that debtor claim an exemption); In re Rushdi, 174 B.R. 126, 127 (Bankr. D. Idaho 1994)(debtor has burden of showing that property is listed on debtors schedules as claimed exemption).

In this case, debtor's claimed exemption for the property is \$0.00. In the court's opinion, a claimed exemption of \$0.00 is the equivalent of no exemption whatsoever. In re Berryhill, 254 B.R. at 242; In re Forti, 224 B.R. 323, 327 (Bankr. D. Md. 1998)(where debtors claim exemption of zero, no dollar amount of exemption is preserved). See also, In re Sherbahn, 170 B.R. 137, 140 (Bankr.

N.D. Ind. 1994)(“the extent of [an] exemption is determined by the value claimed exempt which the debtor placed in its schedule of exemptions.”); Ainslie v. Grablowsky, 149 B.R. 402, 405 (Bankr. E.D. Va. 1993)(“if debtor is entitled to exemption by declaration, then the debtor is be [sic] bound by his declaration”) aff’d sub nom., Addison v. Reavis, 158 B.R. 53 (E.D. Va. 1993), aff’d, Ainslie v. Grablowsky, No. 93-2289, 1994 WL 410995 (4th Cir. Aug. 8, 1994). Without an exemption in the property, there is nothing that § 522(f) can be used to protect, and debtor’s motion should be denied.¹ An order doing so will be entered.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court

¹The court notes that this case was closed on December 30, 1997, and was reopened on debtor’s motion to file a motion to avoid a judicial lien. Once a case has been closed, the debtor may no longer amend its exemptions. In re Bartlett, 326 B.R. 436 (Bankr. N.D. Ind. 2005); In re Clear, 1992 WL 1359570 (Bankr. N.D. Ind. 1992). Since the debtor did not claim an exemption in this property before the case was closed, it may not do so now.